



Reprinted  
April 11, 2003

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## ENGROSSED SENATE BILL No. 144

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DIGEST OF SB 144 (Updated April 10, 2003 3:49 PM - DI 105)

**Citations Affected:** IC 31-34; IC 35-42; IC 35-44; IC 35-50; noncode.

**Synopsis:** Sexual offenses. Removes certain defenses related to sexual misconduct with a minor. Makes the offense of sexual misconduct with a minor that involves deadly force, a deadly weapon, or a drug or controlled substance a "crime of violence" for purposes of the law concerning consecutive and concurrent sentencing where the defendant is at least 18 years of age and the victim is 14 or 15 years of age. Provides a child is a child in need of services if the child lives in the same household with another child who is the victim of a sex crime. Creates a rebuttable presumption that a child is a child in need of services if: (1) the child lives in the same household with another child who is the victim of a sex crime; and (2) the person who committed the sex crime resides in house with the child presumed to be a child in need of services. Provides a defense to a charge of trafficking with an inmate. Provides that certain penal facility employees are entitled to a review of an adverse employment determination based upon trafficking with an inmate.

**Effective:** January 1, 2001 (retroactive); July 1, 2003.

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**Bowser, Long, Antich, Wyss**

(HOUSE SPONSORS — LAWSON L, FOLEY, DICKINSON)

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January 7, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

January 16, 2003, reported favorably — Do Pass.

January 21, 2003, read second time, ordered engrossed.

January 22, 2003, engrossed.

January 23, 2003, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Courts and Criminal Code.

April 8, 2003, amended, reported — Do Pass.

April 10, 2003, read second time, ordered engrossed. Reread second time, amended, ordered engrossed.

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ES 144—LS 6394/DI 109+



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April 11, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED SENATE BILL No. 144

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A BILL FOR AN ACT to amend the Indiana Code concerning  
criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 31-34-1-3 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. **(a)** A child is a child  
3 in need of services if before the child becomes eighteen (18) years of  
4 age:  
5 (1) the child is the victim of a sex offense under:  
6 (A) IC 35-42-4-1;  
7 (B) IC 35-42-4-2;  
8 (C) IC 35-42-4-3;  
9 (D) IC 35-42-4-4;  
10 (E) IC 35-42-4-7;  
11 (F) IC 35-42-4-9;  
12 (G) IC 35-45-4-1;  
13 (H) IC 35-45-4-2; or  
14 (I) IC 35-46-1-3; and  
15 (2) the child needs care, treatment, or rehabilitation that the child:  
16 (A) is not receiving; and  
17 (B) is unlikely to be provided or accepted without the coercive

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intervention of the court.

(b) A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child lives in the same household as a child who is the victim of a sex offense under:

(A) IC 35-42-4-1;

(B) IC 35-42-4-2;

(C) IC 35-42-4-3;

(D) IC 35-42-4-4;

(E) IC 35-42-4-7;

(F) IC 35-42-4-9;

(G) IC 35-45-4-1;

(H) IC 35-45-4-2; or

(I) IC 35-46-1-3; and

(2) the child needs care, treatment, or rehabilitation that the child:

(A) is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

SECTION 2. IC 31-34-12-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) A rebuttable presumption is raised that a child is a child in need of services if the state establishes that:**

(1) another child in the same household is the victim of a sex offense described in IC 31-34-1-3; and

(2) the sex offense described in IC 31-34-1-3:

(A) was committed by an adult who lives in the household with the child; and

(B) resulted in a conviction of the adult or a judgment under IC 31-34-11-2 as it relates to the child against whom the sex offense was committed.

(b) The following may not be used as grounds to rebut the presumption under subsection (a):

(1) The child who is the victim of the sex offense described in IC 31-34-1-3 is not genetically related to the adult who committed the act but the child presumed to be the child in need of services under this section is genetically related to the adult who committed the act.

(2) The child who is the victim of the sex offense described in IC 31-34-1-3 differs in age from the child presumed to be the child in need of services under this section.



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(c) A child presumed to be a child in need of services under this section may not be taken into custody or emergency custody under IC 31-34-2 unless the court first finds cause to take the child into custody or emergency custody following a hearing in which the parent, guardian, or custodian of the child is accorded the rights described in IC 31-34-4-6(a)(2) through IC 31-34-4-6(a)(5).

SECTION 3. IC 35-42-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:

(1) a Class B felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class A felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:

(1) a Class C felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class B felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. **However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).**

(d) It is a defense that the child is or has ever been married.



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**However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).**

SECTION 4. IC 35-44-3-9, AS AMENDED BY P.L.243-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: Sec. 9. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; or

(3) delivers, or carries to a ~~work site~~ **worksite** with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or a deadly weapon.

**(c) It is a defense to a charge under subsection (b)(1) that the article delivered to an inmate or child is:**

**(1) not contraband or prohibited property (as defined in IC 11-11-2-1);**

**(2) necessary for the health or safety of the inmate or child; and**

**(3) delivered because the facility has not provided the inmate or child with the article after the inmate, the child, or an employee of the facility has requested the article.**

SECTION 5. IC 35-50-1-2, AS AMENDED BY P.L.228-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) As used in this section, "crime of violence" means:

(1) murder (IC 35-42-1-1);



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- (2) attempted murder (IC 35-41-5-1);
- (3) voluntary manslaughter (IC 35-42-1-3);
- (4) involuntary manslaughter (IC 35-42-1-4);
- (5) reckless homicide (IC 35-42-1-5);
- (6) aggravated battery (IC 35-42-2-1.5);
- (7) kidnapping (IC 35-42-3-2);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual misconduct with a minor as a Class A felony ~~(IC 35-42-4-9)~~; **under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2);**
- (12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1);
- (13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or
- (14) causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the aggravating and mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c) in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

- (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or
- (2) while the person is released:
  - (A) upon the person's own recognizance; or
  - (B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are

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1 imposed.

2 (e) If a court determines under IC 35-50-2-11 that a person used a  
3 firearm in the commission of the offense for which the person was  
4 convicted, the term of imprisonment for the underlying offense and the  
5 additional term of imprisonment imposed under IC 35-50-2-11 must be  
6 served consecutively.

7 **SECTION 6. [EFFECTIVE JULY 1, 2003] An employee of a penal**  
8 **facility who has been the subject of an adverse employment**  
9 **decision based on a violation of IC 35-44-3-9 (b)(1) involving the**  
10 **delivery of an article that is not contraband or prohibited property**  
11 **(as defined in IC 11-11-2-1) after January 1, 2002, and before July**  
12 **1, 2003, is entitled to a redetermination of any employment action**  
13 **taken in response to the violation, including but not limited to a**  
14 **rehearing or reinstatement.**

15 **SECTION 7. [EFFECTIVE JULY 1, 2003] This act applies only to**  
16 **crimes committed after June 30, 2003.**

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## SENATE MOTION

Mr. President: I move that Senator Long be added as coauthor of Senate Bill 144.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 144, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 144 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Senators Antich and Wyss be added as coauthors of Engrossed Senate Bill 144.

BOWSER

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 144, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 31-34-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. **(a)** A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child is the victim of a sex offense under:
  - (A) IC 35-42-4-1;
  - (B) IC 35-42-4-2;
  - (C) IC 35-42-4-3;
  - (D) IC 35-42-4-4;
  - (E) IC 35-42-4-7;
  - (F) IC 35-42-4-9;
  - (G) IC 35-45-4-1;
  - (H) IC 35-45-4-2; or
  - (I) IC 35-46-1-3; and
- (2) the child needs care, treatment, or rehabilitation that the child:
  - (A) is not receiving; and
  - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

**(b) A child is a child in need of services if before the child becomes eighteen (18) years of age:**

- (1) the child lives in the same household as a child who is the victim of a sex offense under:**
  - (A) IC 35-42-4-1;**
  - (B) IC 35-42-4-2;**
  - (C) IC 35-42-4-3;**
  - (D) IC 35-42-4-4;**
  - (E) IC 35-42-4-7;**
  - (F) IC 35-42-4-9;**
  - (G) IC 35-45-4-1;**
  - (H) IC 35-45-4-2; or**
  - (I) IC 35-46-1-3; and**
- (2) the child needs care, treatment, or rehabilitation that the child:**
  - (A) is not receiving; and**
  - (B) is unlikely to be provided or accepted without the**



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**coercive intervention of the court.**

SECTION 2. IC 31-34-12-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4.5. (a) A rebuttable presumption is raised that a child is a child in need of services if the state establishes that:**

**(1) another child in the same household is the victim of a sex offense described in IC 31-34-1-3; and**

**(2) the sex offense described in IC 31-34-1-3:**

**(A) was committed by an adult who lives in the household with the child; and**

**(B) resulted in a conviction of the adult or a judgment under IC 31-34-11-2 as it relates to the child against whom the sex offense was committed.**

**(b) The following may not be used as grounds to rebut the presumption under subsection (a):**

**(1) The child who is the victim of the sex offense described in IC 31-34-1-3 is not genetically related to the adult who committed the act but the child presumed to be the child in need of services under this section is genetically related to the adult who committed the act.**

**(2) The child who is the victim of the sex offense described in IC 31-34-1-3 differs in age from the child presumed to be the child in need of services under this section.**

**(c) A child presumed to be a child in need of services under this section may not be taken into custody or emergency custody under IC 31-34-2 unless the court first finds cause to take the child into custody or emergency custody following a hearing in which the parent, guardian, or custodian of the child is accorded the rights described in IC 31-34-4-6(a)(2) through IC 31-34-4-6(a)(5)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 144 as printed January 17, 2003.)

WEINZAPFEL, Chair

Committee Vote: yeas 13, nays 0.



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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 144 be returned to the second reading calendar forthwith for the purpose of amendment.

LAWSON L

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 144 be amended to read as follows:

Page 4, after line 2 , begin a new paragraph and insert:

"SECTION 4. IC 35-44-3-9 , AS AMENDED BY P.L.243-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: Sec. 9. (a) As used in this section, "juvenile facility" means the following:

- (1) A secure facility (as defined in IC 31-9-2-114 ) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.
- (2) A shelter care facility (as defined in IC 31-9-2-117 ) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

- (1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;
- (2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; or
- (3) delivers, or carries to a ~~work site~~ **worksite** with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or a deadly weapon.

**(c) It is a defense to a charge under subsection (b)(1) that the article delivered to an inmate or child is:**

- (1) not contraband or prohibited property (as defined in IC 11-11-2-1 );**

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**(2) necessary for the health or safety of the inmate or child;  
and**

**(3) delivered because the facility has not provided the inmate or child with the article after the inmate, the child, or an employee of the facility has requested the article.**

**SECTION 5. [EFFECTIVE JULY 1, 2003] An employee of a penal facility who has been the subject of an adverse employment decision based on a violation of IC 35-44-3-9 (b)(1) involving the delivery of an article that is not contraband or prohibited property (as defined in IC 11-11-2-1 ) after January 1, 2002, and before July 1, 2003, is entitled to a redetermination of any employment action taken in response to the violation, including but not limited to a rehearing or reinstatement."**

Renumber all SECTIONS consecutively.

(Reference is to ESB 144 as reprinted April 8, 2003.)

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